HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No. 8051 OF 2006

Between:

Smt. Anees Fatima Sajidah

……Petitioner

And

The Hon'ble Chief Judge,

City Civil Courts, Hyderabad

and another

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri R. Yogender Singh

Counsel for the Respondents : Sri C.V. Nargarjuna Reddy

Dated: 26-04-2006

Per G.S. SINGHVI, CJ

In this petition, the petitioner has prayed for quashing her suspension brought about vide order dated 28-04-2003 and charge sheet dated 28-03-2006 issued by Chief Judge, City Civil Courts, Hyderabad (respondent No.1).

The petitioner, who joined service on 01-08-1975 in the City Civil Courts at Hyderabad as Steno-Typist was named in Crime No.9/ACB-CR/2003 registered on 25-4-2003 under Section 7 of the Prevention of Corruption Act, 1988. As a sequel to this, respondent No.1 passed order dated 28-4-2003 under Rule 8 (1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the 1991 Rules') whereby he placed the petitioner under suspension. After about seven months, respondent No.1 issued memorandum dated 11-12-2003 for holding a regular departmental enquiry against the petitioner on the following charge:

> "**Article – I** That the said Smt. Anees Fatima Sajidah, Head Clerk, (under Suspension) while working in the Family Court, Hyderabad has been trapped by the ACB Authorities at about 12 noon on 26-4-2003 for accepting the bribe of Rs.300/- as illegal gratification for registering a case relating to the matrimonial matters. The above act on the part of the individual amounts gross negligence and dereliction of duties, which attracts act of unbecoming of a Government Servant."

The petitioner filed reply dated 15-11-2005 and denied the charge. Sri P. Adinarayana, X Additional Chief Judge who was appointed as inquiry officer sent communication dated
18-02-2006 to respondent No.1 pointing out some defects in the charge sheet. After considering the same, respondent No.1 issued order dated 28-03-2006 for holding enquiry on the reframed charge, which reads as under:

> "**ARTICLE OF CHARGE**: That you, Smt. Anees Fatima Sajidah, Head Clerk (now under suspension) while working as Head clerk in the Family Court, Hyderabad, being incharge to scrutinize the petitions filed in the said court in order to number the same, raised certain objections on the petition in SR No.4184 of 2003 dated 21-4-2003 filed by Smt.Gunde Naveneetha for registering the divorce petition filed by her against her husband, that on 22-4-2003 you, Smt. Anees Fatima Sajida demanded bribe of Rs.300/- from the complainant
> Sri Sunil Raj, advocate, the counsel for petitioner to show the official favour of not raising further objections to register the said petition, that on 26-4-2003 at about 12 noon by abusing her official position as Head clerk, demanded and accepted an amount of Rs.300/- as illegal gratification other than legal remuneration from the said Sunil Raj for the above said purpose and that while doing so, were caught red handed by the ACB officials and that you thereby violated R.3 of A.P.C.S. (Conduct) Rules, 1964 viz., committed misconduct, an act of unbecoming of a Government Servant."

Immediately after receipt of order dated 28-3-2006, the petitioner filed this petition wherein she has prayed for quashing of the enquiry proceedings on the ground that respondent No.1 does not have the power, jurisdiction or authority to issue fresh charge sheet during the subsistence of the enquiry proceedings initiated vide memorandum dated 11-12-2003. She has also prayed for quashing the suspension on the ground that the same has been unduly prolonged.

Sri Yogender Singh, learned counsel for the petitioner argued that order dated 28-3-2006 issued by respondent No.1 is liable to be quashed, because there is no provision in the1991 Rules under which the disciplinary authority can reframe

the charge or initiate fresh enquiry on the charge which is subject matter of an earlier enquiry. He further argued that delay in the finalization of the enquiry proceedings cannot be attributed to the petitioner, and, therefore, her continued suspension should be declared illegal and quashed.

Sri C.V.Nagarjuna Reddy submitted that the impugned order was passed by respondent No.1 in the context of communication dated 18-2-2006 sent by the inquiry officer pointing out certain defects in the charge framed earlier. He further submitted that order dated 28-3-2006 passed by respondent No.1 is not for initiation of fresh enquiry on the same charge and mere reframing the charge can be termed as illegal or quashed by invoking the doctrine of double jeopardy.

We have thoughtfully considered the respective arguments/submissions. In our view there is no merit in the petitioner's challenge to order dated 28-3-2006 passed by respondent No.1 or continued suspension of the petitioner. A reading of the charge enumerated in memorandum dated
11-12-2003 and order dated 28-03-2006 makes it clear that substratum of the allegation levelled against the petitioner has not been changed. What respondent No.1 has done is that after taking cognizance of the defects pointed out by the inquiry officer, he reframed the charge, so that at a later stage the petitioner may not complain that the charge sheet served upon her was defective. In our opinion, the action taken by respondent No.1 to reframe the charges cannot lead to an inference that the petitioner is being subjected to inquiry on the same charge twice over and, in any case, the petitioner's cause cannot be said to have been prejudiced simply because the charge levelled against her has been reframed. She has not even pleaded that her defence will be prejudiced on account of reframing of the charge. Therefore, we do not find any valid ground to entertain her challenge to order dated 28-3-2006.

By now it is well settled that in disciplinary matters, the Court would not interfere with the action taken by the employer only on the ground of infraction of one or other rule or even violation of the principles of natural justice. In all such cases, the aggrieved employee is not only required to plead but also produce prima facie evidence to show that his/her cause has been prejudiced on account of defect in the charge sheet/non-compliance of the procedural requirement laid down in the rules or

violation of the principles of natural justice.

In some of the earlier judgements the Supreme Court had expressed the view that burden to prove that the employees' cause had not been prejudiced on account of violation of the statutory rules and the principles of natural justice was on the employer, the issue should be treated as finally concluded the other way by virtue of the Constitution Bench judgement in **Managing Director, ECIL Vs. B. Karunakar** and the contrary view need not be followed by us. In **B. Karunakar's** case (supra), the Constitution Bench considered the conflicting views expressed by different benches of the Supreme Court in **Union of India Vs. Mohd. Ramzan Khan** (1991) 1 SCC 588 and **K.C. Asthana Vs. State of Uttar Pradesh** (1988) 3 SCC 600 on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench of the Supreme Court was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Supreme Court also considered the following incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in **Mohd. Ramzan Khan's** case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of

punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in **Ramzan Khan's** case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the basic question in affirmative, their Lordships considered the ancillary questions and answered question No.(v) in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **State of U.P. v. Harendra Arora** a two judges bench of the Supreme Court referred to the judgment of the Constitution Bench in **Managing Director, ECIL v. B.Karunakar** (supra) and laid down the following propositions:

> i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of

procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College** the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

"It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick** the Supreme Court referred to the judgement of the Constitution Bench in **B. Karunakar's** case (supra) and observed that "the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply

of a copy of the enquiry report. A court will refrain from interfering with an order having regard to “useless formality theory, in a given case”.

In the present case, the enquiry proceedings have not made any tangible progress, because, even though the memo of charge was served on the petitioner as early as in November 2003, she filed reply only in the month of November, 2005. She will now be entitled to file reply to the reframed charge and raise all legally permissible objections to the conduct of enquiry. If she raises any substantive objection, the disciplinary authority is bound to consider the same and then pass appropriate order. However, it cannot be assumed that on account of reframing of the charge, her cause has been prejudiced and on that ground the proceedings of inquiry should be stultified.

As regards the continued suspension of the petitioner, it is apposite to observe that the petitioner herself is responsible for the delay. She took almost two years to file reply to the charge-sheet. In our opinion, by taking note of the delaying tactics adopted by the petitioner, the enquiry officer could have proceeded exparte. By not taking such step, he will be deemed to have shown extreme leniency in the matter. Therefore, we do not find any substance in the grievance of the petitioner against her continued suspension.

For the reasons mentioned above, the writ petition is dismissed.

Before parting with the case, we consider it proper to take cognizance of the request made by learned counsel for the petitioner that respondent No.1 may be directed to revise the subsistence allowance payable to his client. In this regard it is sufficient to observe that the petitioner shall be free to make a representation to the competent authority for payment of the revised subsistence allowance. We hope and trust that any such representation made by the petitioner would receive appropriate and expeditious consideration at the hands of the competent authority.

While disposing of the writ petition in the manner indicated above, we deem it proper to record our anguish on the abnormal delay in the conduct of enquiry and ordain the disciplinary authority as well as the inquiry officer to ensure that the proceedings are concluded as early as possible, but latest within a period of six moths. Any effort on the part of the petitioner to delay the enquiry proceedings must

be sternly dealt with by the concerned authorities.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD,J

26-04-2006

ks/GRR